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Remarks

Claims 1, 10-12, 15 and 36 are under consideration.

Claims 2-9, 13, 14 and 16-28 are withdrawn.

Claims 29-35 are canceled without prejudice in order to expedite the further prosecution of this application.

Claim 36 is new. This claim is dependent on claim 15 and indirectly on claim 10, and reads on the elected species. Full support for claim 36 is found, *inter alia*, at page 32, lines 7-15, inclusive.

Claims 1 and 10 are amended to further define the invention under consideration. Full support for the amendments is found, *inter alia*, at page 5, lines 25-26; page 6, lines 4-7; page 16, lines 1-2; page 32, line 8 and lines 16-17; page 37, lines 1-2; and FIGURE 28.

Claim 10 also has been rewritten in independent form.

The specification is amended at pages 13, 32 and 35 to obviate inadvertent typographical errors. No new matter has been introduced.

The rejection of claims 1, 10-12 and 15 as anticipated by U.S. Patent No. 6,290,724 to Marino is not warranted, and is hereby traversed.

The intervertebral insert 20 shown by Marino is not adapted for insertion into a spinal disc passageway. Also, anchoring fins 36 do not engage the disc, as presently claimed, but instead penetrate the vertebral endplates. See, for example, FIGS 7 & 13; col. 9, line 66 to col. 10, line 8; col. 13, lines 27-38 and lines 61-63.

Further as to claims 10-12, 15 and 36, the intervertebral insert 20 shown by Marino does not have a cylindrical body, nor can it be made with a cylindrical body because in such a case the necessary camming surfaces 28 and 30 (col. 8, lines 50-56; see also FIGS. 11-13) would have been eliminated.

Regarding claims 11 and 12, anterior end 22 of the Marino device is open (FIGS. 1A, 4A and 4B); thus it is neither bullet shaped nor generally rounded.

Withdrawal of the rejection based on Marino is believed to be in order.

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In view of the cancellation of claims 29-35, on additional claim fees are believed to be due for the additional new claim 36 or rewriting of claim 10 in independent form.

The foregoing amendments to the claims and the accompanying discussion are deemed to dispose of all issues in this case and to place this application in condition for allowance. Early such action is solicited.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this AMENDMENT AND RESPONSE UNDER RULE 111 is being transmitted by facsimile transmission to Fax No. 571-273-8300 on December 11, 2007.

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